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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
JOSE T. VERE,

Petitioner,

- against -

WILLIAM T. HAGGETT, Superintendent,
Mt. McGregor Correctional Facility,

Respondent.
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ORDER
08 Civ. 10852 (ER)

Ramos, D.J.:

Jose T. Vere ("Vere" or "Petitioner") brought a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 (the "Petition"). Doc. 2. On January 8, 2009, the Honorable Kenneth M. Karas, to whom this case was originally assigned, referred the Petition to Magistrate Judge George A. Yanthis for a report and recommendation.¹ On September 25, 2012, Judge Yanthis issued the Report and Recommendation, recommending that the Petition be denied and notifying Vere that he had fourteen days from service of the Report and Recommendation to file written objections. Doc. 21. Instead of filing objections, however, Vere attempted to appeal Judge Yanthis's Report and Recommendation to the Second Circuit through a notice of appeal.² Doc. 26. The Court then directed that the notice of appeal be filed as Petitioner's objections to the Report and Recommendation. *Cf. Theard v. Artus*, No. 09 Civ. 5702 (NGG) (LB), 2012 WL 4757897, at *1 (E.D.N.Y. Oct. 4, 2012) (deeming a habeas petitioner's notice of appeal of a

¹ On May 20, 2011, this case was reassigned to the Honorable Vincent L. Briccetti. Doc. 13. Then, on January 6, 2012, this case was reassigned to this Court. Doc. 16.

² By Order dated March 8, 2013, the Court extended the deadline for Vere's written objections to April 8, 2013. Doc. 23. Petitioner filed the notice of appeal on April 3, 2013. Doc. 26.

magistrate judge's report and recommendation to be written objections because a report and recommendation cannot be appealed to the Second Circuit).

I. Standard of Review

A district court reviewing a magistrate judge's report and recommendation "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). Parties may raise "specific," "written" objections to the report and recommendation "[w]ithin fourteen days after being served with a copy." *Id.*; *see also* Fed. R. Civ. P. 72(b)(2). A district court reviews *de novo* those portions of the report and recommendation to which timely and specific objections are made. 28 U.S.C. § 636(b)(1)(C); *see also United States v. Male Juvenile (95-CR-1074)*, 121 F.3d 34, 38 (2d Cir. 1997). The district court may adopt those parts of the report and recommendation to which no party has timely objected, provided no clear error is apparent from the face of the record. *Lewis v. Zon*, 573 F. Supp. 2d 804, 811 (S.D.N.Y. 2008). The district court will also review the report and recommendation for clear error where a party's objections are "merely perfunctory responses" argued in an attempt to "engage the district court in a rehashing of the same arguments set forth in the original petition." *Ortiz v. Barkley*, 558 F. Supp. 2d 444, 451 (S.D.N.Y. 2008) (citations and internal quotation marks omitted); *see also Genao v. United States*, No. 08 Civ. 9313 (RO), 2011 WL 924202, at *1 (S.D.N.Y. Mar. 16, 2011) ("In the event a party's objections are conclusory or general, or simply reiterate original arguments, the district court reviews the [R&R] for clear error.").

II. Discussion

Vere's notice of appeal does not reference any specific portions of the Report to which he objects. Thus, the Court reviews the Report for clear error.

The Court has reviewed Judge Yanthis's thorough and well-reasoned Report and finds no error, clear or otherwise. The Court therefore adopts Judge Yanthis's recommendation to deny the Petition for the reasons stated in the Report.

For the reasons set forth above, Vere's petition for a writ of habeas corpus is DENIED. The Clerk of the Court is directed to enter judgment, mail a copy of this order to Petitioner, and close the case.

Furthermore, because Vere has not made a substantial showing of the denial of a constitutional right, no certificate of appealability shall issue. The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this Order would not be taken in good faith; therefore, *in forma pauperis* status is denied for purposes of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444–45 (1962).

It is SO ORDERED.

Dated: March 9, 2015
New York, New York



Edgardo Ramos, U.S.D.J.